

1 because when and if the case reaches the appellate court
2 there is apparently no relief for this defendant against
3 whom the judge has directed a verdict. While the majority
4 of courts hold you can't direct a verdict it is still
5 possible, and the appellate courts approve it, for a judge
6 to command that a jury return a verdict.

7 I would like to read from the Horning case that
8 Delegate Weidemeyer cited, because this is the Supreme
9 Court's most recent word on what a judge has power to do,
10 and it is an interesting decision because Justice Holmes --

11 THE CHAIRMAN: Your time has expired.

12 DELEGATE BOTHE: May I read one paragraph,
13 because I want the Delegates to know what the Supreme
14 Court says is an appropriate direction to a jury?

15 THE CHAIRMAN: Proceed.

16 DELEGATE BOTHE: That judge said, and the
17 Supreme Court said it was all right, "In conclusion, I
18 will say to you" -- that is the members of the jury --
19 "that failure by you to bring in a verdict in this case
20 can arise only from a flagrant disregard of the evidence
21 and the law as I have given it to you and a violation